IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 876 of 2002

Reserved on : 11th May, 2007

Date of Decision: 25th June, 2007

Kuldeep Kumar Sharma	Petitioner
Versus	
Union of India and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the petitioner: Mr. Surinder Sharma, Advocate.

For the respondents: Mr.Ashwani Pathak, Central Government Counsel.

Sanjay Karol, J.

Petitioner has filed the present petition assailing the orders dated 10th November, 2001 (Annexure PA) and 5th April, 2002 (Annexure PD). Petitioner was enrolled with Assam Rifles on 23rd February, 2001 at Solan (HP), and was sent for training to SKV Training Battalion, Imphal Coy. No.2 Platoon. During the process of verification of character and antecedents, based on the information given by the Superintendent of Police, Hamirpur District it was so found there was a case pending against the petitioner, in relation to FIR No.29 of 2000 dated 17.2.2000 under Section 171 (F) IPC registered with Police Station Solan, District Solan, H.P. While filling up the enrolment form, petitioner had thus given false information in relation to Question No.12 in the enrolment form. Consequently, during the course of his training, petitioner was dismissed

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

from service in terms of Order dated 10th November, 2001 (Annexure PA) for giving false information during enrolment (fraudulent enrolment). Petitioner made a representation, which was also turned down vide letter dated 5th April, 2002 (Annexure PD).

Learned counsel for the petitioner has challenged the aforesaid two orders primarily on the ground that no opportunity of hearing was afforded to the petitioner before the passing of the impugned orders.

While admitting that the aforesaid case was pending adjudication, the defence taken is that since the case already stood withdrawn at the request of Public Prosecutor, therefore, the petitioner ought to have been reinstated.

Perusal of the record shows that while filling the Assam Rifles Recruitment Form for enrolment whereby petitioner was required to furnish information as to whether he has been arrested, prosecuted, convicted, imprisoned under any law in force in India, petitioner has answered as 'No'. The said form has been certified to be solemnly affirmed. Petitioner has also given an undertaking to the effect that if he is found unfit to become an efficient solider during the course of his training, he is liable to be discharged from service and till his attestation as Rifleman he shall not enjoy any privileges as a Government servant.

The object of requiring information in column 12 of the attestation form and certification thereof by a candidate is to ascertain and verify the character and antecedents of the candidate as on the date of filling and solemnly affirming of form to judge the suitability or continuance in service.

The fact that there was a criminal case pending against petitioner in the Court of ACJM, Kasuali at Solan is not disputed and is also clearly borne out from the record. Petitioner was required to furnish such

information, which he deliberately concealed and fraudulently got himself enrolled in Assam Rifles as a trainee. Had he furnished this information, he could not have been recruited and sent for training. This fact was discovered only on verification of his character and antecedents.

The fact that no notice was issued to the petitioner prior to dismissal and no adequate opportunity of hearing was afforded to the petitioner is not in dispute. The question which arises for consideration now is as to whether a person who fraudulently got himself enrolled as a trainee by concealing relevant material information is entitled for a hearing in compliance of principles of natural justice or not. Undisputedly had the petitioner furnished the information correctly he could not be enrolled as a trainee and sent for training. His selection itself was tainted and his dismissal as a result of his concealment and suppression according to me would not warrant an opportunity of hearing. In my view no serious prejudice has been caused to the petitioner if no opportunity of hearing was afforded to the petitioner before the order of dismissal was passed. In my considered view it would have been a futile exercise, in view of the admitted position that not only on the date of enrolment but even on the date of his dismissal, a criminal case was pending trial and the petitioner was being prosecuted in a Court of law. Subsequent withdrawal of the same and that too at the request of the Public Prosecutor in any event would have no bearing on his action of concealment or his continuation in service.

In *State Bank of Patiala vs. S.K.Sharma*, reported in (1996) 3 SCC 364, the Apex Court has held that while applying the Rule of *audi alteram partem*, the Court must always bear in mind the ultimate and overriding objective underlining the Rule to ensure a fair hearing and that there is no failure of justice. It is this objective which should guide the Courts in

applying the Rule to varying situations that arise before them. Balance has to be struck between public interest and private interest.

Even though audi alteram partem is one of the basic pillars of natural justice and no one should be condemned unheard, however, the principle cannot be put into a straight jacket formula and may not be applied in a given case unless a prejudice is shown to have caused to the person. The principles of natural justice are not necessarily required to be followed where it would result into futile exercise. [*Ashok Kumar Sonkar vs. Union of India and others*, reported in (2007) 4 SCC 54, *Ramakrishna Kumat vs. State of Karnataka*, (2003) 3 SCC 374].

The withdrawal of the prosecution, in my view, has no relevance with the question which the petitioner was required to answer. Candidate's conduct and antecedents are important and relevant factors and consideration for his selection and recruitment in the Assam Rifles, which is engaged not only protecting the Borders but also maintaining law and order in the country. Suppression of material information and making a false statement has bearing on the character and antecedents of the candidate in relation to his continuance in service. The candidate having suppressed material information and/or given false information cannot claim a right to appointment and continuance in service.

In somewhat similar case where criminal case pending against the candidate was subsequently withdrawn, the Apex Court negatived the contention of the candidate that he be allowed to continue in service. (*Kendirya Vidyalaya Sangathan and others vs. Ram Ratan Yadav*, reported in (2003) 3 SCC 437.)

That apart the show cause notice, in view of the admitted facts as set out hereinabove, is only a useless formality. The result is, in any way, going to remain the same.

An objection has been taken by the respondents with regard to the territorial jurisdiction of this Court. Admittedly, the petitioner is a resident of the State of Himachal Pradesh from where he was selected and sent for training. Therefore, this Court would have the jurisdiction.

Learned counsel for the petitioner has relied upon the decision of the Apex Court in *Secy. Deptt. Of Home Secy., AP & others vs. B.Chinnam Naidu*, reported in 2005 (2) Scale 118. In my view, the same is not applicable and is clearly distinguishable on facts as unlike the case before the Apex Court, there the petitioner was required to disclose the pendency of any prosecution against him.

No other point was raised or urged by the learned counsel for the parties.

For the foregoing reasons, the writ petition is dismissed.

25th June, 2007
(C)

(Sanjay Karol),
Judge.